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M3ITC commend the Commission for their actions to proceed with the proposed redesignation of the 28 Gigahertz ("GHz") band from a point-to-point microwave common carrier to a Local Multipoint Distribution Service ("LMDS"), and offer the following comments:

### **Band Segmentation Plan**

1. The Commission proposes to allocate 1 GHz in two noncontinuous segments of spectrum: 27.50 - 28.35 GHz band segment; and 29.10 - 29.25 GHz band segment. The other 1 GHz of spectrum is allocated for satellite services. M3ITC disagree with the Commission's Band Segmentation Plan proposal since it will effectively *limit the number of LMDS licenses to one per market*. CellularVision and other unproved video equipment vendors state each video channel requires 20 MHz of spectrum. To compete in the marketplace against established conventional cable providers, a LMDS operator will need at least 50 channels protected against interference from "secondary" service providers. *Rationale: An upgraded conventional cable operation can deliver more than 50 channels of video services.* The Commission's plan only allows the LMDS operator to have approximately 42 channels of video services protected against interference. The Commission must reconsider its proposed band segmentation plan to allocate at least 1,000 MHz protected against interference to allow LMDS operators to provide video services in a competitive manner. In addition, the Commission needs to reconsider its proposal to allocate 1 GHz of continuous spectrum to minimize the impacts to current equipment designs. Otherwise, the proposed Commission's plan will inhibit the rapid deployment of LMDS.

### **LMDS Equipment Manufacturers**

2. Paragraph 48 of 3rd NPRM: The Commission stated CellularVision equipment is manufacture to operate in the proposed Band Segmentation Plan. M3ITC disagree with the Commission's assessment. LMDS equipment is not readily available on the market. Only prototype or pre-production equipment is being used on a limited basis. Production quality equipment is not readily available on the market. The FCC acknowledges the near term shortfalls of LMDS as reference in paragraph 90 of 3rd NPRM. M3ITC is concern no equipment manufacturers with sufficient capacity will be available to meet the anticipated market demand for LMDS equipment once the Commission begins the licensing process. Such equipment shortfalls occurred in the 220 Megahertz ("MHz") Specialized Mobile Radio Service ("SMRS") industry and the Interactive Video Data Services ("IVDS") industry. Such Commission oversights have caused the Commission to amend the rules by granting additional time for construction to 220 MHz SMRS and IVDS licensees due to lack of equipment availability. M3ITC request the Commission keep this in mind when deciding the final rulemaking. M3ITC recommend the Commission insures at least one or more qualified equipment manufacturers with sufficient capacity are available before the grant of any LMDS license. Otherwise, such shortfalls will drive away sources of the *critical financial capital* from small businesses who plan to participate in the LMDS industry.

## **Regulatory/Licensing Issues**

### **Number of LMDS Licensees Per Designated Market**

3. M3ITC concur with statements made by CellularVision, Texas Instruments and several Bell Operating Companies that 1 GHz of spectrum is required for any LMDS licensee (paragraph 75 of 3rd NPRM). In addition, M3ITC agree with the Commission's conclusions that LMDS will begin as a video service provider (paragraph 77 of 3rd NPRM). Since the Commission's plans to allocate only 1 GHz for LMDS, this decision by default requires the Commission to award one license per market.
4. M3ITC disagree with Commission's proposal to allocate more than 1 license per market if only 1 GHz of spectrum is available to LMDS. Licenses with less than 1 GHz will restrict the number of video channels a LMDS operator, if using an analog system such as CellularVision, can provide to the market, thus restricting the marketability of LMDS. Transition to digital technology will probably be restricted for next 3 to 5 years based upon the industry limited experience.

### **Pioneer's Preference**

5. M3ITC believe it would not be appropriate for the Commission to levied similar provisions on CellularVision's pioneer preference licensee as those levied on other pioneer's preference licensees in PCS (Paragraph 73 of 3rd NPRM).

### **Geographic Service Areas**

6. Paragraph 60 of 3rd NPRM: The Commission proposes to use Basic Trading Areas ("BTAs") versus the typical Metropolitan Statistic Area ("MSA")/Rural Service Area ("RSA") to grant LMDS licenses. M3ITC disagree with the Commission's proposal for BTAs. M3ITC believe smaller areas, such as Principal MSAs ("PMSAs"), and smaller MSAs and RSAs be designated as the service areas. Primarily, PMSAs are manageable markets for smaller operators, as well as larger operators, and greater market coverage will be more attainable in a shorter time. Definition of larger markets' areas would serve to eliminate or disqualify the sincere applicant entrepreneurs wishing to enter the LMDS industry because the greater financial requirements.
7. Service of Minimum Areas and/or Populations. M3ITC supports the Commission's revised proposals for LMDS build out requirement as stated in paragraph 117 of 3rd NPRM. However, M3ITC believes the Commission is still establishing an artificial buildout requirement that is not necessary if auctions are employed. Market conditions will drive operators to deploy the system to meet market demand. M3ITC recommend no build out requirement be established, however, a time limit to which an operator can claim his service area should be considered (i.e.,

eight years). After the specified time, the Commission should encourage other providers to apply for unserved areas in the same manner as cellular unserved areas.

### Cross-Ownership

8. M3ITC believe that the Commission should adopt cross-ownership restrictions for the 28 GHz service. The Commission, in it's NPRM, recognizes that 28 GHz provides "... additional competition to franchised cable companies. A new source of competition for franchised cable companies, wireless cable companies, and other video service providers furthers [the Commission's] goal ..."

9. M3ITC, as an applicant, is interested in providing a competitive, alternative source for video programming and other telecommunications services. We hope the Commission will continue to promote competition in the marketplace. The Commission recognizes that LMDS will be a new source of competition. The Commission must adopt cross-ownership restrictions if it is maintain this new source of competition.

10. It should be noted that cable companies are proposing to provide telephony and other telecommunications services through existing or future plants. Telephone companies are acquiring interests in cable television companies and have been authorized to provide "video dailtone" services.

11. The Commission comments several times in it's NPRM that 28 GHz presents a viable competitive alternative to existing providers of video distribution, two-way voice, video and data services. Failure to adopt cross-ownership restrictions may result in the following:

a) Cable companies will control hard wire delivery of video programming and wireless broadcast of video programming. Cable companies have not been able to provide existing hard wire video programming on a competitive basis. This became such a great concern for Congress to approve the Cable TV Consumer Protection Act of 1992 to address cable industry pricing abuses. Allowing the cable companies to own a secondary delivery system, which might otherwise provide healthy competition to wireline services would not be in the best interests of the public.

b) Telephone companies currently provide all forms of telephony, including video teleconferencing. Telephone companies have also been granted the authority to deliver video services, provided they meet certain plant expansion criteria. If the telephone companies are allowed to provide 28 GHz services that compete with existing capabilities and authorizations, there is less likelihood that these services will be provided on a competitive basis. If telephone companies are granted LMDS licenses, then the development of the "fiber optic" telecommunications highway" envisioned by the Commission may not occur. Allowing the telephone companies to own a second delivery system that might otherwise provide healthy competition

to its telecommunications and video dailtone services would not be in the best interests of the public.

12. The Commission should also consider cross-ownership bans for Multichannel Multipoint Distribution Service ("MMDS") and 28 GHz licensees serving the same market areas. As noted earlier, Wireless Cable Association ("WCA") states that MMDS operators have an interest in providing two-way telecommunications services. However, with the proper investment, current MMDS operators can use channel compression and provide these services with existing assigned spectrum.

13. M3ITC concur with the Commission's decision to exclude existing Commercial Mobile Radio Service ("CMRS") providers in acquiring LMDS spectrum since for immature mobile technology.

#### 29.10 - 29.25 GHz Band

14. Paragraph 62 of 3rd NPRM: The Commission proposed to require Mobile Satellite Service ("MSS") uplinks in the 29.10 - 29.25 GHz band be identified 45 days before the commencement of any LMDS auctions. M3ITC disagree with the Commission's proposal. The Commission has a poor history of providing such information in a prompt manner to qualified applicants to allow potential applicants to determine its value (advantages/disadvantages) during their market selection process. M3ITC urges the Commission to require all MSS uplinks be identified one hundred twenty (120) days before the Commission's acceptance deadline for qualified LMDS bidders or applicants' filings.

15. Paragraph 63 of 3rd NPRM: The Commission believes LMDS operator may be able to shared the 150 MHz spectrum, 29.10 - 29.25 GHz band, under certain operating conditions. M3ITC believe the proposed 29.10 - 29.25 GHz band will not be feasible for LMDS due to cost considerations LMDS operators will have to incur significant costs to resolve interference issues to make their services marketable (i.e., two-way communications).

#### Technical Issues

16. 28 GHz is a millimeter technology, that been limited to a number of users (i.e., military) due to costs. The Commission needs to keep in mind the technology is not as mature as cellular or Personal Communications Service ("PCS") since they deal primary in their RF spectrum.

17. The Commission recognizes that the capabilities of LMDS will evolve over time. M3ITC therefore promote the adoption of limited technical standards and regulations at this time. The Commission should allow the industry to develop its own standards like cellular telephone, PCS; we believe this approach is also appropriate for LMDS. The LMDS licensees should be encouraged to work and cooperate with the appropriate technical societies and associations in establishing the technical standards for 28 GHz services.

18. Status of Licensees. The Commission suggests nominal technical regulations and standards to allow 28 GHz licensees to develop a variety of services. Some of these services will be common carrier type services, while other services will be non-common carrier type services. To facilitate development of these services, M3ITC agree with the proposal to allow the licensee to select its status on a channel-by-channel, cell-by-cell basis. M3ITC recommend the Commission designate a single branch or division to manage and coordinate the common carrier/non-common carrier elections and avoid the coordination issues of MMDS. M3ITC disagree with TDS' proposal as stated in paragraph 92 of 3rd NPRM.

### **Auctions**

19. M3ITC believe the proposed eligibility rules will discriminate against small business entrepreneurs if the Commission proceeds with auctions for LMDS licenses. In the recent Broadband PCS auctions, the Commission was able to generate over 7.0 billion dollars. Only the major corporations (i.e., bell operating companies) will be able to obtain the licenses of prime markets by their higher bids. Thus, denying the opportunity of small business entrepreneurs in any of the prime markets. This situation was clearly demonstrated in the recent Broadband PCS auctions. To overcome this disparity, the Commission will need to provide significant bidding credits to allow small business entrepreneurs to compete in the LMDS auctions.

20. Based upon the Commission experience with designated entities in the recent auctions, M3ITC recommend the Commission considers a lottery method to award LMDS licenses. The lottery method treats each application on an equal basis. If the Commission proceeds with auctions, it will deny the public to new products and services; and the small business entrepreneurs the opportunity to develop and to provide such services to the public at competitive prices. Small business entrepreneurs have been a major force in the development of new telecommunications services and products. To address the Commission's goal to raise revenue for the Government, the Commission can establish regulations to require lottery licensees to reimburse in the Government in some manner (i.e., royalty fee).

### **Pending Applications.**

21. The Commission denied all waiver applications pending before it. M3ITC disagree with this action. The Commission has accepted and placed many of those applications on Public Notice before the initial NPRM. M3ITC believe the Commission has a duty to review each application and determine the merits of each application. At a minimum, the Commission cannot adopt of arbitrarily denying applications. Many of the applicants have filed timely Petitions for Reconsideration.

22. M3ITC believe the criterion used by the Commission does not allow the Commission to differentiate among the many waiver requests it received and processed on Public Notice. The Commission has proposed to deny these applications because they do not conform to the service

concept or technical parameters proposed in the NPRM. Since these concepts and parameters are not finalized, M3ITC request the Commission to review its position concerning those timely filed Petitions and if so warranted, allow these applicants to modify their applications to conform to the Commission's rules and regulations as adopted and again review the applicants' requests for waivers.

23. M3ITC urges the Commission to review these timely filed Petitions to see if there is a basis for distinguishing among any of the individual waiver requests.

### **Proposed Rule Amendments**

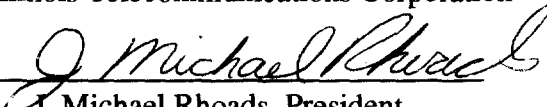
24. The Proposed Rule Amendments promulgated by the Commission are based upon the initial conclusions of the Commission without benefit of Comments from interested parties. However, based upon the comments, M3ITC request the Commission examines the impact of the proposed Amendments and rule changes on small business entities.

25. M3ITC believe the proposed eligibility rules will discriminate against small business entrepreneurs if the Commission proceeds with auctions for LMDS licenses. Based upon the recent Broadband PCS auctions, the Commission was able to generate over 7.0 billion dollars. Only the major corporations (i.e., bell operating companies) will be able to obtain the licenses of prime markets by their higher bids. Thus, denying the opportunity of small business entrepreneurs access in any of the prime markets. This situation was clearly demonstrated in the recent Broadband PCS auctions. In conjunction with the Communications Act, the Commission must allow the public to participate in the telecommunications industry in a meaningful way. M3ITC request the Commission adopts positions more favorable to the public and small business entrepreneurs.

26. M3ITC request the Commission establishes specific guidance on acceptable standards for both Eligibility and the level of detail required to be included in Application Exhibits. A higher level of guidance will allow applicants to better meet the application expectations set by the Commission.

Respectfully submitted,

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